U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 0 4 2013 Office: LONDON, ENGLAND FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h), 8 U.S.C. § 1182(h) of the Immigration and Nationality Act; section 212(i), 8 U.S.C. § 1182(i) of the Immigration and Nationality Act

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Michael Rosenberg

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, London, England. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying wavier application will be approved.

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing crimes involving moral turpitude (CIMT); and under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for seeking admission into the United States by fraud or willful misrepresentation. The field office director stated that the applicant sought waivers of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(i) and 1182(h), respectively. The field office director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

In a decision dated February 2, 2011, the AAO found the applicant was not inadmissible under section 212(a)(6)(C) of the Act for seeking admission into the United States by fraud or willful misrepresentation. However, we agreed with the director's determination that the applicant was inadmissible under 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude and had not established extreme hardship to a qualifying relative.

On motion, counsel argues that had the AAO properly applied *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), and *In re Sanudo*, 23 I&N Dec. 968 (BIA 2006), we would have found the conviction was not for a CIMT. Counsel asserts that assault is a common law crime in England, and the Offenses Against the Person Act of 1861 defined different levels of *scienter* and penalties to the crime. Counsel contends that *In re Sanudo* holds that assault is generally not a CIMT unless an aggravating dimension is present, such as the use of a deadly weapon, harm to an individual deserving of special protection, or the intent to inflict serious bodily harm. Counsel asserts that crimes involving moral turpitude in the Offenses Against the Person Act of 1861 are in Section 18 (shooting), Section 20 (maliciously wounding or inflicting grievous bodily harm), Sections 22-24 (poison), Sections 28-30 (gunpowder), Section 36 (assaulting a clergyman), Section 37 (assaulting a magistrate), Section 38 (assaulting a peace officer), Section 40 (assaulting a seaman), and Section 43 (assaulting a female or boy). Counsel argues that the requisite *scienter* for finding moral turpitude is specific intent to injure, citing *Matter of Silva-Trevino, supra.* Counsel asserts that the crime of assault occasioning actual bodily harm in violation of Section 47 has no element of specific intent to injure. By its terms, counsel argues that Section 47 prohibits simple assault, which is not morally turpitudinous. Counsel declares that Crown Prosecution Service (CPS) guidelines stated that the degree of injury distinguishes Section 39 of the Criminal Justice Act of 1988 from Section 47 of the Offenses Against the Person Act of 1861. Counsel argues that *Matter of Silva-Trevino* and *In re Sanudo* establish that the degree of injury inflicted will not alter the classification of an assault or provide an aggravated dimension in which to turn an assault into a CIMT. Counsel thus contends that assault occasioning actual bodily harm is categorically not a CIMT. Counsel asserts that the CPS guideline did not exist at the commission of the applicant's crime in 1973 and is not part of the statute, and the AAO should not have related the injuries in the guideline to Section 47 of the Offenses Against the Person Act of 1861.

Counsel asserts that even if the modified categorical approach had been applied to the applicant's crime, his crime would still not be a CIMT. The applicant's sentence was minor, that of a fine, which is consistent with the applicant's testimony that his crime was simply a "teenage fist fight." Counsel states that the applicant requested a copy of the police report for the incident, and on motion has provided a letter from the Bristol police in which it is stated they no longer have records for this case. Counsel contends that the Bristol Magistrates Court stated they have no substantive records of the proceeding, and the applicant will supplement the record with an official communication from the Bristol Magistrates Court. Counsel argues that there is no reason to conclude the applicant's conviction involved an aggravating factor, and in the absence of evidence to the contrary, under the modified categorical approach, his offense was not a CIMT. Counsel claims that even if the AAO classifies the applicant's assault conviction as a CIMT, his crime fits within section 212(h)(1)(A) of the Act, as his crime occurred 38 years ago.

Counsel contends that the AAO concluded that the assault committed by the applicant was a "violent or dangerous crime" within the meaning of 8 C.F.R. § 212.7(d) without any analysis or citation of authority. Counsel asserts that the operative language of the regulation is from *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), and the conduct at issue in *Matter of Jean*, second-degree manslaughter, is far more serious than a teenage fist fight. Counsel argues that the AAO's determination that the regulation applied to misdemeanor assault, where a simple fine was imposed as punishment, is wrong. Counsel contends that in explaining the discretionary waiver standard the Attorney General stated that except in extraordinary circumstances, he was not inclined to favorably exercise discretion on behalf of dangerous or violent felons. Counsel asserts that the applicant was not convicted of a felony and his crime is not within a definition intended for felons. Counsel points to a prior AAO decision where we found that infliction of corporal injury to a spouse was not a violent or dangerous crime.

Lastly, counsel cited *Rivera-Peraza v. Holder*, 684 F.3d 906, 910 (9th Cir. 2012), and asserted that even assuming the applicant's assault was a "violent or dangerous crime," the heightened discretionary requirements under 8 C.F.R. § 212.7(d) include hardship that is imposed on the applicant, his spouse, and other family members; and is not limited to the "extreme hardship" standard of "qualifying relatives."

A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. *See* 8 C.F.R. § 103.5(a)(3). A motion to reopen must state new facts. *See* 8 C.F.R. § 103.5(a)(2). As to reconsideration, counsel makes new arguments contending that the applicant's conviction for assault occasioning actual bodily harm is not a CIMT, that his offense is not a violent or dangerous crime, and the scope of 8 C.F.R. § 212.7(d) covers all hardship related to inadmissibility, including hardship to the applicant. As to reopening, counsel provides new evidence, consisting of a letter from the Bristol police, regarding the applicant's record of conviction.

Upon review of motion to reopen and reconsider, the AAO will grant the motion, but for the reasons set forth in this decision, we will again dismiss the appeal and deny the waiver application.

We had determined earlier that the applicant's most recent convictions for theft of a non-dwelling-house and burglary with intent to steal (non-dwelling) were CIMTs, and that his conviction for assault occasioning actual bodily harm was a CIMT.

Counsel argues that assault occasioning actual bodily harm in violation of Section 47 of the Offenses Against the Person Act of 1861 does not categorically involve moral turpitude because the offense is simple assault, and the aggravating factors that are needed to transform simple assault into a CIMT are located in other sections of the Offenses Against the Person Act of 1861. However, the applicant has not demonstrated that there is no "realistic probability" that crimes involving moral turpitude are encompassed within Section 47. Although we acknowledge that the statute does encompass crimes that are properly characterized as simple assault, and therefore not crimes involving moral turpitude, we find that not all of the assault crimes that would involve moral turpitude are found in other sections of the Offenses Against the Person Act of 1861. For example, in *Regina v Lang, & Ors* [2005] EWCA Crim 2864 (2006), the Court stated that the appellant had two convictions of assault occasioning actual bodily harm. In regards to the first conviction the appellant committed an unprovoked assault on a man, punching him in the body and several times in the face, cutting his lips, because the man refused to give up the keys to his vehicle. The second conviction involved the appellant's unprovoked attack on his girlfriend, causing injuries to her knees and her left eye. In *Regina v C* [2006] EWCA Crim 1715 (22 June 2006), the appellant and two other defendants assaulted a woman, who they accused of stealing money. They dragged the woman from a car, and hit her with their fists and feet. The appellant struck the woman with a rowing paddle, and threatened to smash a piece of concrete over her head. Before leaving her they threatened to return with shooters and knives. The victim had a one-inch split to the bridge of her nose, two swollen eyes, and bruised ears and bruises to her forehead. Lastly, in *R v Boswell* [2007] EWCA Crim 1587 (26 June 2007), the appellant was convicted of making a threat to kill and assault occasioning actual bodily harm for punching his former girlfriend in the face and on the body, biting her arm, and holding a kitchen knife to her throat and threatening to kill her. Lastly, in *Regina v. Quick & Anor* [1973] EWCA Crim 1 (18 April 1973), Quick pleaded guilty to the charge of assault occasioning actual bodily harm for striking a paraplegic patient while working as a nurse at a mental hospital. Quick's assault that fractured the patient's nose, split his lip, and inflicted bruises on his face, arm, and shoulders involved general intent.

Counsel contends that assault occasioning actual bodily harm does not have the element of specific intent to injure, but the crime addressed in *Silva-Trevino* also lacked the requisite scienter as an explicit element of the crime. That the element is missing from the statutory definition does not necessarily preclude its presence in the commission of the crime, or our determination that there is a "realistic probability" that the statutory offense encompasses crimes committed with that element. Counsel's arguments fail to take into account cases, such as the aforementioned cases, where the offense of assault occasioning actual bodily harm has been applied to crimes where there apparently was specific intent to injure and meaningful physical harm that is more than offensive touching but less than the "grievous bodily harm" covered by a separate statutory provision, or general intent to commit the assault coupled with serious harm to persons society views as deserving of special protection. See, e.g., *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988).

Counsel has not demonstrated that there is a "realistic probability, not a theoretical possibility," that Section 47 has been applied only to conduct not involving moral turpitude. As such, it is then the

applicant's burden to show that the record of conviction demonstrates that his particular crime did not involve moral turpitude, of if the record of conviction does not resolve the question, to present evidence outside the record of conviction that does. *Matter of Silva-Trevino* at 703-704.

In the decision dated February 2, 2011, we noted that the applicant had not submitted his full record of conviction or demonstrated his record was unavailable pursuant to the requirements in 8 C.F.R. § 103.2(b)(2). On motion, counsel provides new evidence, consisting of a letter dated February 9, 2011 from the Bristol police, regarding the applicant's charge of assault occasioning actual bodily harm. This letter stated that Avon and Somerset Constabulary no longer hold any records in relation to the applicant's offense, which was committed on May 16, 1973. However, the applicant has not provided a letter from the Bristol Magistrates Court regarding the assault conviction, which counsel asserted would be provided on motion. As such, the applicant has not established that the documents comprising his record of conviction are unavailable. Furthermore, the applicant has not provided a detailed account regarding his crime, including his intent, the harm inflicted and the identity/nature of the victim, which must be established in order to determine whether the crime was a crime involving moral turpitude. Accordingly, the AAO cannot conclude, based on the record before it, that the applicant's conviction is not a CIMT.

Counsel contends that the AAO erred in concluding that the assault committed by the applicant was a "violent or dangerous crime" within the meaning of 8 C.F.R. § 212.7(d). Counsel asserts that the operative language of the regulation was from *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), and that the conduct at issue in *Matter of Jean,* second-degree manslaughter, is more serious than a teenage fist fight. Counsel argues that the AAO's conclusion that 8 C.F.R. § 212.7(d) applies to a misdemeanor assault conviction with a fine as punishment is wrong. Counsel contends that as to the discretionary waiver standard the Attorney General stated that, he was not inclined to exercise favorable discretion on behalf of dangerous or violent felons, and that the applicant's assault conviction was not a felony and is thus not within 8 C.F.R. § 212.7(d).

The regulation at 8 C.F.R. § 212.7(d) provides:

> The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The plain language of 8 C.F.R. § 212.7(d) does not indicate that the regulation applies only to individuals who have committed violent or dangerous felonies, and counsel has not cited any reliable

authority that 8 C.F.R. § 212.7(d) is limited in this manner. As to counsel's argument that the crime at issue in *Matter of Jean,* second-degree manslaughter, is more serious than a teenage fist fight, the heightened discretionary standard in *Matter of Jean* applies to crimes characterized as violent or dangerous in nature and is not limited to the crime at issue in *Matter of Jean.* 23 I&N Dec. 373, 384. Our prior decision referred to by counsel stated that the record did not establish that the applicant's conduct was violent or dangerous, or indicate that the injury inflicted on the applicant's victim was serious in nature. As noted above, the applicant has not met his burden in establishing the facts of his crime. However, even accepting the applicant's limited account of the crime, he at a minimum used physical force in striking another person with his fists, which is clearly a violent act by any common meaning of the term. Counsel's contention that crimes with minor sentences imposed by a court are not within the meaning of 8 C.F.R. § 212.7(d) is not supported by *Matter of Jean,* for the Attorney General does not indicate that a court's sentence determines whether an offense constitutes a violent crime.

In sum, the AAO finds that the applicant's conviction is a violent crime. In the instant case, as we find that there are no national security or foreign policy considerations that would warrant a favorable exercise of discretion, we will consider whether denial of admission would result in exceptional and extremely unusual hardship.

Exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001). However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. Counsel is correct that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard articulated by the Attorney General in *Matter of Jean*, *supra*, and codified at 8 C.F.R. § 212.7(d).

In assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. 23 I&N Dec. 56 at 63. In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. Not all of the foregoing factors need be analyzed in any given case and the list of factors is not exhaustive. *Id.*

In *Monreal*, the Board provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

> [T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health

> issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-64.

In *Matter of Andazola-Rivas*, the Board noted that, "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face." 23 I&N Dec. 319, 323 (BIA 2002). At issue in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent's minor children was demonstrated by evidence that they "would suffer hardship of an emotional, academic and financial nature," and would "face complete upheaval in their lives and hardship that could conceivably ruin their lives." *Id.* at 321 (internal quotations omitted). The Board viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The Board observed:

> While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the Board in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that "the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief." 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board noted that these factors included her heavy financial and familial burden, lack of support from her children's father, her U.S. citizen children's unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The Board stated, "We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met." *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. *See Gonzalez Recinas*, 23 I&N Dec. at 469 ("While any hardship case ultimately succeeds or fails on its own merits and on the

particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.").

On appeal, the applicant's wife asserted that the hardships she will experience in living in the United States while her husband, with whom she has been married for six years, lives in England are: separation from her husband; and loss of his emotional support while she assists her daughter, who is raising a child who has cerebral palsy, and while she helps her mother, who is in the early stages of senility. The applicant's wife declared that if she lived with her husband in England she would experience emotional and financial hardship due to their limited employment prospects.
The applicant's wife asserted in her statement dated September 4, 2012 that her physician stated that she has chronic pancreatitis, which is likely caused by stress. The applicant's wife declared that since May 2011 she has been taking medication for depression, migraines, and a hernia. The applicant's wife stated that the applicant had a minor stroke in February 2012, and lives alone and has no one to take care of him. She asserted that her husband was treated for peripheral artery disease and it is difficult for him to work as a chef due to the physical exertion required for his job, and he would be able to find a better job in Florida. The applicant's wife contended that they are experiencing financial hardship in maintaining two households. She asserted that she would miss her daughter, grandchild, and mother if she relocated to the United Kingdom. The applicant's wife declared that she works as a case manager in a medical office, and would not be able to work as a licensed practical nurse in England because she would need to complete an educational program for licensure. She contended that if she works in the United States she will be eligible for monthly social security benefits of $1,300 when she is 66 years old, and her husband would qualify for social security benefits after working ten years. The applicant's wife stated that her mother lives in her own home and receives social security benefits, and she gives her mother $500 every month. She claimed that her mother requires constant attention in order to function on her own, and because her mother would experience extreme emotional hardship in relocating to England, she would most likely have to live in a nursing home in Florida.

The claim that the applicant's wife has serious medical problems is consistent with the letter from Dr. dated August 6, 2010. Dr. stated that the applicant's wife was hospitalized in February 2012 for pancreatitis, and the persistence and seriousness of her condition is likely from the severe stress of separation from her husband. Dr. declared that the applicant's wife has chronic pancreatitis that is controlled with medication, and continued stress could cause a recurrence of an acute outbreak. Dr. indicated that the applicant's wife was unable to work for eight weeks after her hospitalization and is employed in his office as a case manager. Dr. stated that since May 2011 the applicant's wife has been prescribed medication for depression and her condition is exacerbated by social factors, including separation from her husband. Dr. conveyed that the applicant's wife takes medication for migraine headaches, which are disabling for days at a time and triggered by stress. He stated that she has a hiatal hernia. The medical problems of the applicant's wife are also established by the progress notes of Dr. dated February 27, 2012; and final reports by Drs. . The applicant's wife is concerned about the well-being of her husband. The claim that the applicant has mental health and physical health conditions is in agreement with the letter from Dr. dated June 3, 2012, stating that the applicant was diagnosed with post-traumatic stress disorder in 2006 relating to childhood abuse, and would benefit from the support that married life can provide. She stated that the applicant had a transient ischaemic attack in January 2012 and should not live alone in case it should

reoccur; and the letter from Dr. dated July 19, 2012 stated that the applicant has peripheral arterial disease. In view of the aforementioned new evidence we find that when the asserted hardships are considered together, they demonstrate that the applicant's wife will experience "exceptional and extremely unusual hardship" if she were to remain in the United States while the applicant lives in England.

The applicant's wife contends on motion that she is distressed about relocating to England and having to separate from her mother, daughter and grandchildren, who live in the United States. The submitted evidence of emotional hardship due to separation from family members in the United States is consistent with her claim. In the statement submitted on appeal the applicant's wife states that her 75-year-old mother needs her help, and that she and the applicant have been a source of emotional support for her daughter, whose child, , has cerebral palsy. She asserts that her daughter had lived in the United Kingdom, but recently moved to the United States for physical therapy, and that she and the applicant are the main support system for her daughter, and they intended to coordinate their moves to the United States so they could look after her daughter's children, particularly The applicant's wife declares that the denial of the waiver application was devastating and "put a great strain on my daughter and us." The child development report dated March 9, 2006, is consistent with the claim that the applicant and his wife have been a source of support to the applicant's stepdaughter and The applicant's wife asserts in the statement dated September 4, 2012 that she regularly spends time with who is now eight years old. The undated letter by Dr. corresponds to the claim that the applicant's mother-in-law has Alzheimer's disease and the applicant's wife is her primary care giver. Lastly, the submitted letters from doctors reveal that the applicant's wife takes medication for depression, and that she has severe migraines and pancreatitis which are triggered by stress. -In light of the unique circumstances of this case, we find that when the asserted hardships are considered together, they meet the "exceptional and extremely unusual hardship" standard as required in 8 C.F.R. § 212.7(d).

In *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, the AAO must then "[b]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the criminal convictions of burglary and theft of a non-dwelling-house, burglary with intent to steal (non-dwelling), taking conveyance without authority, theft, going equipped for theft, making a false statement or representation in order to obtain benefit, handling, assault occasioning actual bodily harm, and housebreaking and stealing. The favorable factors are his marriage to a U.S. citizen and the hardship to her from separation, his prior business ownership, his present employment as a chef, and the passage of 30 years since the criminal convictions. The applicant's crimes are serious in nature, but we find that the record also demonstrates his rehabilitation. Consequently, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the wavier application is approved.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the

applicant has now met that burden. Accordingly, the motion is granted and the waiver application is approved.

ORDER: The motion is granted, and the waiver application is approved.